

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DELWIN JAY WOHLGEMUTH
a.k.a. DELVIN WOHLGEMUTH
14112 Creek Court
Fort Myers, FL 33908

Registered Nurse License No. 592679
Nurse Anesthetist Certificate No. 2798

Respondent

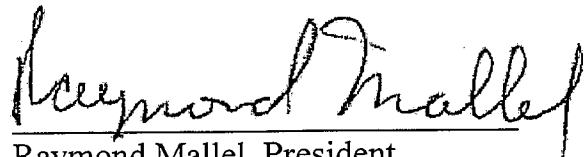
Case No. 2013-249

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **January 10, 2013.**

IT IS SO ORDERED **January 10, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1. KAMALA D. HARRIS
Attorney General of California
2. KAREN B. CHAPPELLE
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7. *Attorneys for Complainant*

8. **BEFORE THE**
9. **BOARD OF REGISTERED NURSING**
10. **DEPARTMENT OF CONSUMER AFFAIRS**
11. **STATE OF CALIFORNIA**

12. In the Matter of the Accusation Against:

Case No. 2013-249

13. **DELWIN JAY WOHLGEMUTH, AKA**
14. **DELVIN WOHLGEMUTH**
15. **419 S. Coit Street, Apt. 4**
16. **Florence, SC 29501**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17. **Additional Address:**
18. **14112 Creek Court**
19. **Fort Myers, FL 33908**

20. **Registered Nurse License No. 592679**
21. **Nurse Anesthetist Certificate No. 2798**

22. Respondent.

23. IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
24. proceeding that the following matters are true:

PARTIES

25. 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
26. of Registered Nursing. She brought this action solely in her official capacity and is represented in
27. this matter by Kamala D. Harris, Attorney General of the State of California, by Sydney M.
28. Mehringer, Deputy Attorney General.

2. Delwin Jay Wohlgemuth, aka Delvin Wohlgemuth (“Respondent”) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about December 28, 2001, the Board of Registered Nursing (“Board”) issued Registered Nurse License No. 592679 to Respondent. The Registered Nurse License expired on October 31, 2003, and has not been renewed.

4. On or about January 7, 2002, the Board issued Nurse Anesthetist Certificate No. 2798 to Respondent. The Nurse Anesthetist Certificate expired on October 31, 2003, and has not been renewed.

JURISDICTION

5. Accusation No. 2013-249 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 9, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2013-249 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2013-249. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2013-249, agrees that cause exists for discipline and hereby surrenders his Registered Nurse
4 License No. 592679 and his Nurse Anesthetist Certificate No. 2798 for the Board's formal
5 acceptance.

6 10. Respondent understands that by signing this stipulation he enables the Board to issue
7 an order accepting the surrender of his Registered Nurse License without further process.

8 CONTINGENCY

9 11. This stipulation shall be subject to approval by the Board of Registered Nursing.
10 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
11 Registered Nursing may communicate directly with the Board regarding this stipulation and
12 surrender, without notice to or participation by Respondent. By signing the stipulation,
13 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
14 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
15 stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of
16 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
17 the parties, and the Board shall not be disqualified from further action by having considered this
18 matter.

19 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of
20 License and Order, including facsimile signatures thereto, shall have the same force and effect as
21 the originals.

22 13. This Stipulated Surrender of License and Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
26 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
27 executed by an authorized representative of each of the parties.
28

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 592679, issued to Respondent Delwin Jay Wohlgemuth, aka Delvin Wohlgemuth, is surrendered and accepted by the Board of Registered Nursing.

IT IS FURTHER ORDERED that Nurse Anesthetist Certificate No. 2798, issued to Respondent Delwin Jay Wohlgemuth, aka Delvin Wohlgemuth, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and Nurse Anesthetist Certificate and the acceptance of the surrendered license and certificate by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

2. Respondent shall lose all rights and privileges as a registered nurse and a nurse anesthetist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2013-249 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If and when Respondent's license or certificate is reinstated, he shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,165.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit

1 the Board from reducing the amount of cost recovery upon reinstatement of the license or
2 certificate.

3 6. If Respondent should ever apply or reapply for a new license or certification, or
4 petition for reinstatement of a license or certificate, by any other health care licensing agency in
5 the State of California, all of the charges and allegations contained in Accusation, No. 2013-249
6 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
7 of Issues or any other proceeding seeking to deny or restrict licensure.

8 7. Respondent shall not apply for licensure or petition for reinstatement for two (2)
9 years from the effective date of the Board of Registered Nursing's Decision and Order.

10 ACCEPTANCE

11 I have carefully read the Stipulated Surrender of License and Order. I understand the
12 stipulation and the effect it will have on my Registered Nurse License and Nurse Anesthetist
13 Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly,
14 and intelligently, and agree to be bound by the Decision and Order of the Board of Registered
15 Nursing.

16
17 DATED: 10-28-12


18 DELWIN JAY WOHLGEMUTH, AKA DELVIN
19 WOHLGEMUTH
20 Respondent

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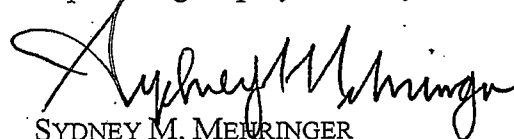
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: October 23, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



SYDNEY M. MENNINGER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2013-249

1 KAMALA D. HARRIS
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2 KAREN B. CHAPPELLE
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3 SYDNEY M. MEHRINGER
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6 Facsimile: (213) 897-2804
E-mail: Sydney.Mehringer@doj.ca.gov
7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013 - 249

13 **DELWIN JAY WOHLGEMUTH, AKA**
14 **DELVIN WOHLGEMUTH**

ACCUSATION

15 **Address of Record:**
16 **419 S. Coit Street, Apt. 4**
17 **Florence, SC 29501**

18 **Additional Address:**
19 **14112 Creek Court**
20 **Fort Myers, FL 33908**

21 **Registered Nurse License No. 592679**
22 **Nurse Anesthetist Certificate No. 2798**

23 Respondent.

24 Complainant alleges:

25 **PARTIES**

26 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
27 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
28 Consumer Affairs.

2. On or about December 28, 2001, the Board of Registered Nursing ("Board") issued
Registered Nurse License Number 592679 to Delwin Jay Wohlgemuth, aka Delvin Wohlgemuth

1 ("Respondent"). The Registered Nurse License expired on October 31, 2003, and has not been
2 renewed.

3 3. On or about January 7, 2002, the Board issued Nurse Anesthetist Certificate No. 2798
4 to Respondent. The Nurse Anesthetist Certificate expired on October 31, 2003, and has not been
5 renewed.

6 JURISDICTION

7 4. This Accusation is brought before the Board, under the authority of the following
8 laws. All section references are to the Business and Professions Code unless otherwise indicated.

9 5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
10 any licensee, including a licensee holding a temporary or an inactive license, for any reason
11 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

12 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
14 licensee or to render a decision imposing discipline on the license. Under Section 2811,
15 subdivision (b), the Board may renew an expired license at any time within eight years after the
16 expiration.

17 7. Section 118, subdivision (b) grants the Board jurisdiction over suspended, expired,
18 forfeited, cancelled, or surrendered licenses:

19 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
20 board in the department, or its suspension, forfeiture, or cancellation by order of the
21 board or by order of a court of law, or its surrender without the written consent of the
22 board, shall not, during any period in which it may be renewed, restored, reissued, or
23 reinstated, deprive the board of its authority to institute or continue a disciplinary
proceeding against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action against the
licensee on any such ground."

24 8. Title 16, section 1419.3 of the California Code of Regulations defines the period in
25 which a license may be renewed or reinstated:

26 "In the event a licensee does not renew his/her license as provided in Section 2811 of
27 the code, the license expires. A licensee renewing pursuant to this section shall
28 furnish a full set of fingerprints as required by and set out in section 1419(b) as a
condition of renewal.

1 (a) A licensee may renew a license that has not been expired for more than
2 eight years by paying the renewal and penalty fees as specified in Section 1417 and
providing evidence of 30 hours of continuing education taken within the prior two-
year period.

3 (b) A licensee may renew a license that has been expired for more than eight
4 years by paying the renewal and penalty fees specified in Section 1417 and providing
evidence that he or she holds a current valid active and clear registered nurse license
5 in another state, a United States territory, or Canada, or by passing the Board's current
examination for licensure."

6 STATUTES

7 9. Section 2761 of the Code states, in pertinent part:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11

12 "(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
13 against a health care professional license or certificate by another state or territory of the United
14 States, by any other government agency, or by another California health care professional
15 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
16 action."

17 COST RECOVERY

18 10. Section 125.3 of the Code provides, in pertinent part:

19 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
20 proceeding before any board within the department or before the Osteopathic Medical Board,
21 upon request of the entity bringing the proceeding, the administrative law judge may direct a
22 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
23 to exceed the reasonable costs of the investigation and enforcement of the case.

24

25 "(i) Nothing in this section shall preclude a board from including the recovery of the costs
26 of investigation and enforcement of a case in any stipulated settlement."

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1 **CAUSE FOR DISCIPLINE**

2 (Out of State Discipline)

3 11. Respondent is subject to disciplinary action under Code section 2761 subdivision
4 (a)(4) on the grounds of unprofessional conduct because he was disciplined by the State Board of
5 Nursing for South Carolina ("South Carolina Board") in 2004 and he was disciplined by the
6 Department of Health and Human Services, Division of Public Health, State of Nebraska
7 ("Nebraska Health Department") in 2009 as follows:

8 12. On April 27, 2004, a case entitled *In the Matter of Delwin Wohlgemuth, RN, 77695*,
9 the South Carolina Board issued an Order to Suspend Eligibility of Licensure against Respondent.
10 The South Carolina Board found that Respondent's registered nurse license had lapsed and he
11 was denied reinstatement of his license because on November 11, 2002, Respondent had plead
12 guilty to possession with the intent to distribute ecstasy and possession with the intent to
13 distribute cocaine in Greenville County, South Carolina.

14 13. On September 16, 2009, in case entitled *In the Matter of the Request for Hearing by*
15 *Delwin J. Wohlgemuth Denial of Application - RN*, case number H09-1486, the Nebraska Health
16 Department issued a "Findings of Fact and Conclusions of Law and Order," which denied
17 Respondent's application for reinstatement of his registered nursing license. The Nebraska
18 Health Department's decision was based on the following:

19 (a) The April 27, 2004 Order to Suspend Eligibility of Licensure issued by the
20 South Carolina Board, which was based on the convictions for possession with the intent to
21 distribute ecstasy and possession with the intent to distribute cocaine.

22 (b) On October 3, 2005, Respondent was referred by the Florida Intervention
23 Project for Nurses to a psychiatrist/addictionist for evaluation. He was diagnosed with cocaine
24 dependency and probable narcissistic personality disorder.

25 (c) On November 13, 2006, the State of Florida Board of Nursing reprimanded
26 Respondent's license and imposed an administrative penalty and revoked Respondent's license.
27 The revocation was stayed conditioned on his continued participation in the Intervention Project
28

1 for Nurses and compliance with the terms of the Project. Respondent did complete the Project
2 and his Florida license was restored to clear and active status in July 2009.


3 (d) On July 10, 2008, Respondent applied for reinstatement of his Nebraska
4 nursing license, which had expired in October 1996. However, Respondent did not disclose the
5 2004 South Carolina disciplinary action on his application.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

- 9 1. Revoking or suspending Registered Nurse License Number 592679, issued to Delwin
10 Jay Wohlgemuth, aka Delvin Wohlgemuth;
- 11 2. Revoking or suspending Nurse Anesthetist Certificate No. 2798, issued to Delwin Jay
12 Wohlgemuth, aka Delvin Wohlgemuth;
- 13 3. Ordering Delwin Jay Wohlgemuth to pay the Board the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and
- 16 4. Taking such other and further action as deemed necessary and proper.

17 DATED: October 09, 2012

18 *for* 
19 LOUISE R. BAILEY, M.ED., R.N.
20 Executive Officer
21 Board of Registered Nursing
22 State of California
23 Complainant

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